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14 **UNITED STATES DISTRICT COURT**
15 **EASTERN DISTRICT OF WASHINGTON**

16 FEDERAL TRADE COMMISSION,

17 Plaintiff,

18 vs.

19 MERCHANT SERVICES DIRECT,
20 LLC, a Washington Limited Liability
21 Company, also dba SPHYRA, INC., *et*
22 *al.*,

23 Defendants.

No. CV-13-279-TOR

DECLARATION OF CHRIS
MANFRED RE MOTION FOR
TEMPORARY RESTRAINING
ORDER

24 CHRIS MANFRED declares under penalty of perjury that the following is
25 true and correct:

26 1. I am over eighteen years of age and am competent to testify to the
matters herein.

1 2. I am currently employed by Sphyra, LLC, which was formerly called
2 Merchant Services Direct (and which for brevity I will call “MSD” in this
3 declaration).
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5 3. I make this declaration based upon my personal knowledge and
6 based upon the information contained in MSD’s business records. And, if called
7 upon as a witness in this case, I could and would testify competently to the truth
8 thereof.
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10 4. I have been employed by MSD since June 2010. I worked as a sales
11 agent for MSD from approximately June 2010 to May 2011. Then I was
12 promoted to an Assistant Manager. In that role I interviewed prospective agents,
13 I made hiring decisions regarding new, local agents and I trained local agents who
14 were stationed out of the Spokane office. I held that Assistant Manager role until
15 approximately August of 2011 when I was promoted to Manager of the Local
16 Office. Then I moved to Portland, Oregon in September 2012 for approximately
17 seven months where I was operating an office overseeing independent contractors
18 for MSD. I was there until February 2013. I became the Acquisitions Director for
19 MSD in March 2013. In that role, I now manage inside sales for MSD and I
20 oversee all recruiting of independent sales offices and independent sales
21 representatives across the country.
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1 5. I have read the declaration of Kyle Charlson. Many of the
2 statements in his declaration are false and incomplete, and I make this declaration
3 to clarify and correct those statements.
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5 6. In paragraph 8 of his declaration, Mr. Charlson states that Kyle Dove
6 is the Chief Executive Officer of MSD. That is not true. Mr. Charlson also says
7 that Shane Hurley is the Director of Operations for MSD. That is incorrect.
8 Shane Hurley has never been the Director of Operations, and is actually the CEO.
9 Ariel Allen is the Operations Manager.
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11 7. The Independent Sales Contract used today by MSD is different
12 from the contract that Mr. Charlson signed.
13

14 8. It is true that Mr. Charlson worked for MSD from October 2011 to
15 December 2011, in Spokane, Washington. At that time I was Mr. Charlson's
16 direct supervisor.
17

18 9. Before Mr. Charlson was hired, he participated in an initial interview
19 process with numerous other applicants. He was brought back for a second round
20 of interviews, but not all of the applicants were asked back.
21

22 10. Mr. Charlson's second interview lasted an entire day. During that
23 day, Mr. Charlson, and other applicants who were asked back participated in a
24 full day of observation. During that day, other employees at MSD and I spent the
25 first half of the day talking to Mr. Charlson and the other applicants about MSD:
26

1 what services it provides, what products it offers, what makes MSD different
2 from its competition, MSD's philosophies and values, etc. During the second half
3 of the day, Mr. Charlson and the other job applicants were prepared for what they
4 could expect if they were hired to work as an employee of MSD. During the
5 second half of the day they are given the tools necessary to perform solicitation
6 calls to prospective merchants who might be interested in using MSD services.
7
8 Mr. Charlson was given instructions about how to make introduction calls and
9 listened to experienced agents make calls. After that, I observed him make
10 approximately 40 solicitation calls on his own. During and after each call, he
11 received feedback from me or an experienced agent. At the end of that day, I sat
12 down with Mr. Charlson and talked to him about his thoughts on the experience,
13 and whether he thought he wanted to work in the sales industry for MSD. Some
14 of the applicants were not invited to work for MSD. Ms. Charlson was offered
15 the position.
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20 11. If, at the end of the second day, I decided to hire an agent, it was
21 then that the detailed training process started. This was the case for Mr. Charlson.
22 The training process used today by MSD is significantly different than the
23 training process used in 2011 when Mr. Charlson worked for MSD. In 2011,
24 when Mr. Charlson was working for MSD, the first hour of every day that the
25 agents spent at the office was designated for training. Agents practice role
26

1 playing using helpful phone scripts until they get used to making introduction
2 calls. After the first 20 minutes of the training hour, the leaders are called to run
3 an “impact,” MSD’s name for a brief training seminar. Each morning the impact
4 covers a different topic. Some examples of those topics were as follows: terminal
5 training, differences between types of equipment offered by MSD, ATM and
6 sales systems, wireless and phone line terminals, the different options the
7 customer has for paying for the equipment (like leasing, purchasing or borrowing
8 with an insurance program), how to read merchants’ previous processing
9 statements to accurately quote savings, role playing demonstrating how to field
10 different questions, pricing options and details for products and services.
11

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14 12. I have an entire binder full of outlines for the various impact training
15 sessions that were completed with sales agents each morning.
16

17 13. In those impact sessions, the agents were required to attend and take
18 notes.
19

20 14. In 2011, agents had access to Centerpoint, the CRM in which we
21 could access copies of all paperwork needed for their work in the field signing up
22 and/or speaking with merchants. Centerpoint contained an entire folder detailing
23 the impact sessions and the outlines, and were available at all times.
24

25 15. Attachment B to Mr. Charlson’s declaration—a document labeled
26 National Discount Plan—was a pricing plan that was only used by MSD for a

1 short time. It was not in use at the time that Mr. Charlson was working for MSD
2 from October to December 2011. He was not trained to use that pricing plan and
3 it had not been part of the training materials given to sales agents for a long time.
4 I was not aware Mr. Charlson was using that pricing plan, and if he was, it was a
5 mistake. MSD did eventually learn that other agents mistakenly used old plan
6 information that was left in their binders.
7

8
9 16. When MSD realized that some agents were still using the old
10 National Discount Plan for pricing, I personally went through all of the binders
11 for the agents I supervised and removed that pricing plan. The National Discount
12 Plan was also removed from Centerpoint so that agents could not accidentally
13 access and use an outdated pricing plan.
14

15
16 17. Paragraph 19 of Mr. Charlson's declaration is personally disturbing
17 because it suggests that Mr. Charlson was trained to mislead merchant customers,
18 and that is simply wrong. I never trained Mr. Charlson to act or think that way.
19 Further, I never saw Mr. Charlson or any other agent actually highlight a
20 merchant's application papers. In each agent's personal training materials, some
21 agents carried a copy of the merchant application that highlighted each section of
22 the application where the merchant needed to initial or sign, or where the agent
23 had to fill in specific pricing details unique to each customer. They used that form
24 for their own purposes; they did not give that to the merchant. Those agents that
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1 carried a highlighted copy of the application used it as a tool to ensure that they
2 completed the application with the merchant.
3

4 18. Paragraph 22 in Mr. Charlson's declaration is misleading in that it
5 fails to make an important distinction about pricing. Mr. Charlson is correct in
6 that MSD did charge 0.5%, but that is in addition to the interchange rate. MSD
7 can never control or limit the interchange rate (the rate that is charged by VISA
8 and MasterCard).
9

10 19. It is impossible for me to respond to the assertions in paragraph 23 of
11 Mr. Charlson's declaration because he does not identify the "friend" and former
12 MSD customer who Mr. Charlson alleges was misled or confused. But, if Mr.
13 Charlson wrongly quoted his friend that the *only* fee he would be charged was
14 MSD's 0.5% fee, of course Mr. Charlson's friend would have been upset because
15 that is not correct. To reiterate, MSD charges 0.5% in addition to the interchange
16 rate charged by VISA and MasterCard.
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20 20. In paragraph 24 of his declaration, Mr. Charlson says that he didn't
21 know that the "interchange fee" existed. That is a description of the interchange
22 fees typically charged in relation to different types of transactions. I don't
23 understand how that is possible since he was specifically trained on interchange
24 fees. It was part of the impact training that I completed with Mr. Charlson and
25 other agents. Also, information about the interchange rate was available on
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1 Centerpoint. Further, Mr. Charlson's assertion that he did not understand that the
2 interchange fee existed is inconsistent with the allegations he makes in paragraph
3 22 of his declaration: "I remember four different percentage amounts, depending
4 on whether the merchant wanted to accept debit card transactions, credit card
5 transactions, payment over the telephone or sales over the Internet." Those four
6 rates he references are different "effective rates" we taught sales reps that are
7 directly related to the different interchange rates based on how a card is run (i.e.
8 via the internet, debit with the pin number entered, over the phone, etc...).

11
12 21. Mr. Charlson's statements in paragraph 26 of his declaration are
13 incomplete, misinformed, and inaccurate. Mr. Charlson was never taught to
14 mislead customers about terminals, or anything else. It is wrong to mislead
15 customers, and it is contrary to the best interests of MSD and agents, because
16 both do better financially if they continue to receive fees from customers over the
17 long term. We are working hard at MSD to figure out how to do a better job of
18 keeping customers with us longer. Contrary to Mr. Charlson's limited experience
19 (he worked for MSD less than three months), merchants' terminals do get locked
20 by processing providers; some processors are able to prevent terminals from
21 being reprogrammed. But, at the same time, MSD frequently reprograms
22 terminals because it is sometimes cheaper for the merchant to reprogram a
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1 terminal rather than lease or purchase a new terminal. If given time, MSD's
2 deployment department could gather those statistics.

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4 22. Of course the sales agents were allowed to lease terminals to
5 merchants when the merchant wanted a terminal with newer technology or when
6 the merchant's old terminal was not able to be reprogrammed by MSD. The
7 paperwork that Mr. Charlson and other sales agents used in the field clearly set
8 forth the different pricing options for new terminals. If a merchant was leasing a
9 new terminal, the merchant had to execute a lease; the form clearly set forth the
10 terms of the lease. Further, the lease is not effective until MSD completes a
11 recorded conversation with the merchant to ensure that the merchant clearly
12 understands the details of the lease.

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16 23. Mr. Charlson's statements in paragraph 29 of his declaration are
17 false and they are contrary to the written training materials provided to sales
18 agents. They also contradict the training I personally provided to Mr. Charlson.

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20 24. Contrary to Mr. Charlson's statements in paragraphs 29 and 30 of his
21 declaration, merchants were never denied a copy of the materials they signed or
22 the papers governing their contract with MSD. In 2010 and 2011, MSD used
23 carbon copy applications; one copy was for the merchant and one copy was for
24 MSD. In late 2011, MSD transitioned to using application forms that were
25 available for the sales agents to print from Centerpoint. The agents were required
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1 to give the merchant a copy if the merchant wanted a copy at the time of signing.
2 Further, MSD places a welcome call to each new merchant customer; as a part of
3 that process it was standard procedure for MSD to send merchants a copy of all of
4 their account paperwork.
5

6 25. I am personally upset at the allegations in paragraph 33 of Mr.
7
8 Charlson's declaration because he suggests that when I was in charge of training
9 him, I never performed any training or oversight; that is simply not true. Mr.
10 Charlson personally spent two weeks shadowing me when he first started working
11 for MSD. During the first week, Mr. Charlson accompanied me on every
12 appointment I made in the field and he watched me communicate with the
13 merchants. After each meeting with a merchant, we discussed how the meeting
14 went. During the second week, I let Mr. Charlson run many of the merchant
15 meetings. We would then discuss the meeting and I critiqued his performance.
16 Mr. Charlson also ignored the fact that during the entire time he was working for
17 MSD, he attended training sessions three mornings a week (Monday, Tuesday
18 and Wednesday). On either Tuesdays or Wednesdays after work (from 5:00 p.m.
19 - 6:30 p.m.) the agents were required to participate in additional mock
20 appointments with me and other experienced sales agents so they could gain
21 experience communicating with a variety of different merchants and understand a
22 variety of different rate options that applied to different types of merchants. On
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1 Thursdays and Fridays, Mr. Charlson and the other agents were in the field going
2 to the appointments they set earlier in the week
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4 26. Mr. Charlson's statements about the pricing of terminal leases in
5 paragraph 35 of his declaration are mistaken. Sales agents were never allowed to
6 sell merchants terminal leases for hundreds or thousands of dollars. MSD has
7 always had a ceiling on terminal leases—terminal leases never exceeded \$100 per
8 month. In 2010 and 2011, MSD allowed some flexibility; leases could be
9 executed for \$30 - \$100 per month. In 2012, however, MSD changed that; now
10 terminal leases can only be executed for \$20 to \$60 per month.
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13 27. I consider myself an ethical person and treat my job duties and
14 responsibilities very seriously. I take the allegations in Kyle Charlson's
15 declaration personal since I was in charge of his training; it does not accurately
16 describe the policies or attitudes or ethics of MSD. I believe in MSD and I
17 believe it strives to provide quality service and value for its customers and we do
18 that through training our sales agents. It is in MSD's best interest to use highly
19 trained sales agents because those agents will help MSD retain happy customers.
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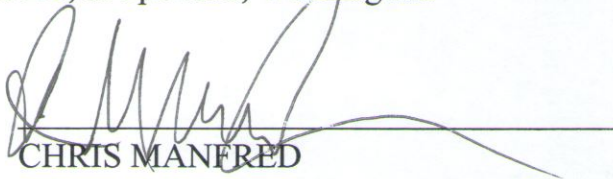
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1 I declare under penalty of perjury under the laws of the United States that
2 the foregoing is true and correct.

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4 Dated this 9th day of August, 2013, at Spokane, Washington.

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7 CHRIS MANFRED

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1 I further certify that I have mailed by United States Postal Service the
2 document to the following non-CM/ECF participants:
3

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8 s/ Geana M. Van Dessel

9 Geana M. Van Dessel
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